

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

6 CAROL A. SECKEL,)
7 Plaintiff,) No. CV-07-0265-CI
8 v.) ORDER GRANTING DEFENDANT'S
9 MICHAEL J. ASTRUE,) MOTION FOR SUMMARY JUDGMENT
Commissioner of Social) AND DENYING PLAINTIFF'S
Security,) MOTION FOR SUMMARY JUDGMENT
10)
11 Defendant.)
12)
13)

14 BEFORE THE COURT are cross-Motions for Summary Judgment. (Ct.
15 Rec. 13, 21.) Attorney Maureen Rosette represents Plaintiff;
16 Special Assistant United States Attorney Terrye E. Shea represents
17 Defendant. The parties have consented to proceed before a
18 magistrate judge. (Ct. Rec. 8.) After reviewing the administrative
19 record and briefs filed by the parties, the court **GRANTS** Defendant's
20 Motion for Summary Judgment and **DENIES** Plaintiff's Motion for
21 Summary Judgment.

JURISDICTION

23 On August 29, 2005, Carol Seckel (Plaintiff) applied for
24 disability insurance benefits and Social Security Income (SSI)
25 benefits. (Tr. 170.) Plaintiff alleged disability due to hip
26 problems and scoliosis, with an onset date of March 31, 2004. (Tr.
27 78, 84.) Benefits were denied initially and on reconsideration.
28 (Tr. 53.) Plaintiff requested a hearing before an administrative

1 law judge (ALJ), which was held before ALJ Richard Say on September
 2 19, 2006. (Tr. 205-13.) Plaintiff, who was incarcerated, waived
 3 personal appearance at the hearing. Her attorney appeared at the
 4 hearing on her behalf and requested the case be decided on the
 5 record. (Tr. 208.) Vocational expert Debra Uhlenkott testified.
 6 (*Id.*) The ALJ denied benefits and the Appeals Council denied
 7 review. (Tr. 30-36.) The instant matter is before this court
 8 pursuant to 42 U.S.C. § 405(g).

9 **STATEMENT OF THE CASE**

10 The facts of the case are set forth in detail in the transcript
 11 of proceedings and are briefly summarized here. Plaintiff was 52
 12 years old at the time of the hearing. (Tr. 210.) She had past work
 13 experience as a baker and hair stylist. (*Id.*) She had a high
 14 school education and attended cosmetology school. (Tr. 82.) She
 15 reported she could not work due to hip pain and inability to stand
 16 for any length of time. (Tr. 79.)

17 **ADMINISTRATIVE DECISION**

18 At step one, ALJ Say found Plaintiff had not engaged in
 19 substantial gainful activity since the onset of disability. (Tr.
 20 32.) At step two, he found Plaintiff had the severe impairment of
 21 "congenital hip dysplasia - status post multiple surgeries." *Id.*
 22 At step three, he found that the impairment does not meet or equal
 23 the requirements of 20 C.F.R., Appendix 1, Subpart P, Regulations
 24 No. 4 (Listings). (Tr. 34.) ALJ Say found Plaintiff's statements
 25 regarding the severity of symptoms were not entirely credible. (Tr.
 26 35.) At step four he found Plaintiff had the residual functional
 27 capacity for light work with postural restrictions. (Tr. 34.)

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1 Based on the record and vocational expert testimony, he determined
 2 Plaintiff was able to perform her past relevant work as a hair
 3 stylist and was therefore not "disabled" as defined in the Social
 4 Security Act. (*Id.*)

5 **STANDARD OF REVIEW**

6 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001),
 7 the court set out the standard of review:

8 The decision of the Commissioner may be reversed only if
 9 it is not supported by substantial evidence or if it is
 10 based on legal error. *Tackett v. Apfel*, 180 F.3d 1094,
 1097 (9th Cir. 1999). Substantial evidence is defined as
 11 being more than a mere scintilla, but less than a
 12 preponderance. *Id.* at 1098. Put another way, substantial
 13 evidence is such relevant evidence as a reasonable mind
 14 might accept as adequate to support a conclusion.
Richardson v. Perales, 402 U.S. 389, 401 (1971). If the
 15 evidence is susceptible to more than one rational
 16 interpretation, the court may not substitute its judgment
 17 for that of the Commissioner. *Tackett*, 180 F.3d at 1097;
Morgan v. Commissioner, 169 F.3d 595, 599 (9th Cir. 1999).

18 The ALJ is responsible for determining credibility,
 19 resolving conflicts in medical testimony, and resolving
 20 ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th
 21 Cir. 1995). The ALJ's determinations of law are reviewed
 22 *de novo*, although deference is owed to a reasonable
 23 construction of the applicable statutes. *McNatt v. Apfel*,
 24 201 F.3d 1084, 1087 (9th Cir. 2000).

25 **SEQUENTIAL PROCESS**

26 Also in *Edlund*, 253 F.3d at 1156-1157, the court set out the
 27 requirements necessary to establish disability:

28 Under the Social Security Act, individuals who are
 29 "under a disability" are eligible to receive benefits. 42
 U.S.C. § 423(a)(1)(D). A "disability" is defined as "any
 30 medically determinable physical or mental impairment"
 31 which prevents one from engaging "in any substantial
 32 gainful activity" and is expected to result in death or
 33 last "for a continuous period of not less than 12 months."
 34 42 U.S.C. § 423(d)(1)(A). Such an impairment must result
 35 from "anatomical, physiological, or psychological
 36 abnormalities which are demonstrable by medically
 37 acceptable clinical and laboratory diagnostic techniques."
 38 42 U.S.C. § 423(d)(3). The Act also provides that a

1 claimant will be eligible for benefits only if his
 2 impairments "are of such severity that he is not only
 3 unable to do his previous work but cannot, considering his
 4 age, education and work experience, engage in any other
 5 kind of substantial gainful work which exists in the
 6 national economy. . . ." 42 U.S.C. § 423(d)(2)(A). Thus,
 7 the definition of disability consists of both medical and
 8 vocational components.

9 In evaluating whether a claimant suffers from a
 10 disability, an ALJ must apply a five-step sequential
 11 inquiry addressing both components of the definition,
 12 until a question is answered affirmatively or negatively
 13 in such a way that an ultimate determination can be made.
 14 20 C.F.R. §§ 404.1520(a)-(f), 416.920(a)-(f). "The
 15 claimant bears the burden of proving that [s]he is
 16 disabled." *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir.
 17 1999). This requires the presentation of "complete and
 18 detailed objective medical reports of h[is] condition from
 19 licensed medical professionals." *Id.* (citing 20 C.F.R. §§
 20 404.1512(a)-(b), 404.1513(d)).

21 It is the role of the trier of fact, not this court, to resolve
 22 conflicts in evidence. *Richardson v. Perales*, 402 U.S. 389, 400
 23 (1971). If evidence supports more than one rational interpretation,
 24 the court may not substitute its judgment for that of the
 25 Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749
 26 F.2d 577, 579 (9th Cir. 1984). Nevertheless, a decision supported
 27 by substantial evidence will still be set aside if the proper legal
 28 standards were not applied in weighing the evidence and making the
 29 decision. *Brawner v. Secretary of Health and Human Services*, 839
 30 F.2d 432, 433 (9th Cir. 1988). If there is substantial evidence to
 31 support the administrative findings, or if there is conflicting
 32 evidence that will support a finding of either disability or non-
 33 disability, the finding of the Commissioner is conclusive. *Sprague*
 34 *v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987).

26 ISSUES

27 The question is whether the ALJ's decision is supported by
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1 substantial evidence and free of legal error. Plaintiff argues the
2 ALJ erred when he (1) discounted her statements regarding the
3 severity of her limitations, and (2) determined she had the RFC for
4 light work. (Ct. Rec. 14 at 5, 7.)

5 DISCUSSION

6 A. Credibility Determination

7 If an adjudicator finds a claimant's statements are unreliable,
8 specific reasons must be provided for rejecting subjective
9 complaints. In the absence of affirmative evidence of malingering,
10 the ALJ's reasons must be "clear and convincing." *Morgan*, 169 F.3d
11 at 599. Furthermore, "the ALJ must specifically identify the
12 testimony she or he finds not to be credible and must explain what
13 evidence undermines the testimony." *Holohan v. Massanari*, 246 F.3d
14 1195, 1208 (9th Cir. 2001). The following factors may be considered:
15 (1) the claimant's reputation for truthfulness; (2) inconsistencies
16 in the claimant's testimony or between his testimony and his
17 conduct; (3) claimant's daily living activities; (4) claimant's work
18 record; and (5) testimony from physicians or third parties
19 concerning the nature, severity, and effect of claimant's condition.
20 *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002). "[O]nce the
21 claimant produces objective medical evidence of an underlying
22 impairment, an adjudicator may not reject a claimant's subjective
23 complaints based solely on a lack of objective medical evidence to
24 fully corroborate the alleged severity of the [disabling symptoms]."
25 *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991).

26 Plaintiff waived her appearance and opportunity to testify at
27 the hearing; therefore, ALJ Say based his decision on the record and
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1 statements made by Plaintiff to medical providers and agency
2 evaluators. (Tr. 34, 207-08.) Initially, he noted that no treating
3 or examining physician opined Plaintiff was unable to work, that
4 there was no medical evidence to support her allegations of total
5 disability. This finding is supported by the medical evidence from
6 Robert Rose, M.D., and the agency physician, Norman Staley, M.D.
7 (Tr. 35, 135, 137, 140-41.)

8 Dr. Rose examined Plaintiff on March 21, 2005, and reviewed
9 imaging reports of her hip, pelvis and lumbar spine. (Tr. 132-37.)
10 He noted a history of scoliosis which caused her some low back pain.
11 Dr. Rose also reported a history of congenital hip dysplasia, "post
12 multiple surgical procedures." (Tr. 134.) He indicated Plaintiff's
13 complaints of pain were primarily related to her left thigh. He
14 observed that she did not use an assistive walking device, had a
15 normal gait, adequate dexterity, and the ability to handle and
16 manipulate. He reported she was able to walk six to eight blocks.
17 (Tr. 132.) Based on a full physical examination and review of
18 imaging reports, Dr. Rose found loss of flexion in Plaintiff's right
19 small finger, a history of hip dysplasia and scoliosis with nominal
20 effect on range of motion and strength. He found no evidence of
21 "significant degenerative disease, disk disease or radicular
22 disease." (Tr. 33, 134.) Dr. Staley reviewed the medical reports
23 and opined Plaintiff was capable of light work with postural
24 limitations. (Tr. 33, 140-41.)

25 In addition to a lack of supporting objective medical evidence,
26 the ALJ gave additional legally sufficient reasons for discounting
27 Plaintiff's statements. He found the record indicated Plaintiff
28 continued her activities of daily living, including "pet care,

1 household chores, shopping, and performing hobbies and other
2 interests . . . consistent with light level work." (Tr. 35.) As
3 noted by the ALJ in his summary of the evidence, Plaintiff reported
4 activities of daily visiting, shopping and appointments, as well as
5 sewing, cooking, cleaning, baking, beadwork and watching television.
6 (*Id.*) These findings are supported by Plaintiff's responses in the
7 agency Function Report. (Tr. 89-92.) He found Plaintiff's
8 allegations that constant pain and an inability to stand for any
9 length of time affected her concentration "were not entirely
10 credible," and supported this finding with specific citations to the
11 record. (Tr. 35, 79.) For example, he cited inconsistencies
12 between her allegations of an inability to concentrate and her self-
13 report that she had no problems with completing projects, paying
14 attention or following instructions. (Tr. 35, 92.) These are
15 "clear and convincing" reasons for discounting Plaintiff's
16 allegations of disabling limitations. The ALJ's credibility
17 determination is supported by substantial evidence and free of legal
18 error.

19 **B. Residual Functional Capacity (RFC)**

20 The RFC determination is the "adjudicator's finding about the
21 ability of an individual to perform work-related activities . . .
22 based upon consideration of all relevant evidence in the case
23 record." *Social Security Ruling (SSR) 96-5.* The final
24 responsibility for the RFC determination is reserved to the
25 Commissioner. *Id.*

26 ALJ Say made specific findings regarding Plaintiff's RFC and
27 discussed what, if any, impact, Plaintiff's impairments have on her
28 functional capacity. (Tr. 34-36.) Medical sources and Plaintiff's

1 representations regarding her past work in disability reports
2 support the ALJ's finding that the Plaintiff was capable of light
3 work with normal breaks and restrictions on climbing, balance,
4 stooping, kneeling, crouching and crawling. (Tr. 97, 104, 140-41.)
5 The ALJ properly considered Plaintiff's description of her hair
6 stylist job as actually performed, as well as her credibility in
7 making his RFC determination. See, e.g., *Webb v. Barnhart*, 433 F.3d
8 683, 688 (9th Cir. 2005). Plaintiff described her hair stylist job
9 as actually performed as requiring seven hours of standing, one hour
10 of reaching, one hour of handling small objects and heaviest weight
11 lifted as ten pounds. (Tr. 104.) The DICTIONARY OF OCCUPATIONAL TITLES
12 (DICOT) describes the job of hair stylist as requiring light
13 exertion level with no requirements for climbing, balancing,
14 stooping, kneeling, crouching, crawling. United States Department
15 of Labor, DICTIONARY OF OCCUPATIONAL TITLES, 332.271-018 (Fourth Ed. Rev.
16 1991).¹ The ALJ properly posed a hypothetical containing the
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18 ¹ Section 404.1567 of 20 C.F.R. defines light work as follows:

19 Light work involves lifting no more than 20 pounds at a
20 time with frequent lifting or carrying of objects weighing
21 up to 10 pounds. Even though the weight lifted may be
22 very little, a job is in this category when it requires a
23 good deal of walking or standing, or when it involves
24 sitting most of the time with some pushing and pulling of
25 arm or leg controls. To be considered capable of
performing a full or wide range of light work, you must
have the ability to do substantially all of these
activities. If someone can do light work, we determine
that he or she can also do sedentary work, unless there
are additional limiting factors such as loss of fine
dexterity or inability to sit for long periods of time.

26 In addition to the weight restrictions, light work requires an
27 ability to stand or walk for six out of an eight-hour day. If a
28 particular light job does not require standing or walking, then the

1 limitations supported by substantial evidence to vocational expert
 2 Debra Uhlenkott. *Bayliss v. Barnhart*, 427 F.3d 1211, 1217-18 (9th
 3 Cir. 2005). (Tr. 211.) The hypothetical propounded to the
 4 vocational expert properly included the limitations assessed by the
 5 ALJ, including mild to moderate chronic pain and the effects of
 6 medication. (Tr. 210-11.) Consistent with the DICOT definition,
 7 Ms. Uhlenkott testified Plaintiff's former work required light level
 8 exertion, and opined that the hypothetical individual could perform
 9 Plaintiff's prior job of hair stylist. (Tr. 210-11.) The ALJ did
 10 not err when he relied on this testimony. *Johnson v. Shalala*, 60
 11 F.3d 1428, 1435 (9th Cir. 1995).

12 The evidence reasonably supports the ALJ's assessment of
 13 Plaintiff's capacity to do work-related tasks. Therefore,
 14 Plaintiff's assertion that the ALJ's RFC determination and finding
 15 of non-disability were legal error is without merit.

16 **CONCLUSION**

17 The Commissioner's determination that Plaintiff is not under a
 18 disability is supported by substantial evidence and free of legal
 19 error. Accordingly,

20 **IT IS ORDERED:**

21 1. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 13**) is
 22 **DENIED**.

23 2. Defendant's Motion for Summary Judgment (**Ct. Rec. 21**) is
 24 **GRANTED**.

25 The District Court Executive is directed to file this Order and
 26 _____
 27 sitting will require one to be able to push and pull arm-hand or
 28 leg-foot controls. *SSR* 83-10.

1 provide a copy to counsel for Plaintiff and Defendant. Judgment
2 shall be entered for **DEFENDANT** and the file shall be **CLOSED**.

3 DATED September 15, 2008.

4

5 S/ CYNTHIA IMBROGNO
6 UNITED STATES MAGISTRATE JUDGE

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